

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHRISTOPHER BROICH,

Plaintiff,

JOINT PRETRIAL ORDER
08-CV-553 (SJF)(ARL)

-against-

THE INCORPORATED VILLAGE OF
SOUTHAMPTON, THE BOARD OF TRUSTEES
OF THE INCORPORATED VILLAGE OF
SOUTHAMPTON, MARK EPLEY, Individually and
as Mayor of The Incorporated Village of Southampton,
LARS KING, Individually and as Former Chief of Police of
The Incorporated Village of Southampton, and WILLIAM
WILSON JR., Individually and as Chief of Police of
The Incorporated Village of Southampton,

Defendants.
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I. FULL CAPTION

The full caption of this action is set forth above.

II. TRIAL COUNSEL

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III. TYPE AND ANTICIPATED LENGTH OF TRIAL

1. **Plaintiff's Statement:** Plaintiff demanded a jury trial in his pleadings Plaintiff estimates (5-7) days of trial will be needed. Plaintiff would like to reserve one additional day after Defendants have concluded putting on their case for the purpose of calling rebuttal witnesses, if needed.
2. **Defendants' Statement:** Defendant estimates that this trial should take 4 days.

IV. ASSERTION OF SUBJECT MATTER JURISDICTION

1. **Plaintiff's Statement:** This Court has original jurisdiction over Plaintiff's federal law claims pursuant to 28 U.S.C. §§ 1331 & 1343. Venue is proper in this case pursuant to 28 U.S.C. § 1391 because (1) the defendants reside in Suffolk County, State of New York which is located in the judicial district of the Eastern District of New York, and (2) a substantial part of the events and/or omissions which give rise to Plaintiff's claim took place in Suffolk County, State of New York which is located in the judicial district of the Eastern District of New York.

2. **Defendants' Statement:** Venue is proper in the Eastern District because the defendant municipality is located within the Eastern District.

V. SUMMARY OF CLAIMS AND DEFENSES TO BE TRIED

Plaintiff's Claims:

1. Defendants engaged in discriminatory and disparate treatment by virtue of their failure to promote Plaintiff in violation of § 1981 of the United States Constitution.
2. Defendants discriminatory action were aided and abetted by, and with the full knowledge and consent of Defendant Epley in violation of § 1981 of the United States Constitution.
3. Defendants discriminatory action were aided and abetted by, and with the full knowledge and consent of Defendant King in violation of § 1981 of the United States Constitution.
4. Defendants discriminatory action were aided and abetted by, and with the full knowledge and consent of Defendant Wilson in violation of § 1981 of the United States Constitution.
5. The Plaintiff seeks statutory costs, attorney's fees, lost wages, and promotional opportunities, and punitive damages in an amount to be determined

Defendants' defenses:

Defendants Epley and Wilson are no longer proper defendants in this action as a result of decisions by Judge Feuerstein and the Second Circuit Court of Appeals which dismissed various claims against them. Epley was not employed by the Village at the time of this allegation and there is no conspiracy claim, he therefore cannot be held liable for the failure to promote plaintiff. Wilson as lieutenant had no involvement in the failure to appoint the plaintiff to the position, and all allegations against him are against his actions as chief of police, the claims against him were dismissed and therefore he should be withdrawn as a defendant.

Plaintiff fails to state a claim under 42 USC §1981.

No policy, regulation, decision, custom or practice adopted, followed or endorsed or ratified by the defendants authorize a deprivation of plaintiff's constitutional rights.

Defendant appointed the better candidate and therefore had a legitimate business purpose for not appointing the plaintiff to the position of detective sergeant.

VI. STATEMENT OF STIPULATED FACTS

1. Plaintiff Christopher Broich was employed by the Southampton Village Police Department from May 16, 1988, through December 13, 2007.
2. Herman Lamison, an African American, was promoted to the position of Detective Sergeant within the Southampton Village Police Department on February 18, 2005.
3. Plaintiff's last day of employment was December 13, 2007.

VII. SCHEDULE OF EXHIBITS

Plaintiff's Exhibits

<u>Exhibits</u>	<u>Description</u>	<u>Objections</u>
1.	CD/DVD 1	Authenticity, relevancy, 901, 401, 403
2.	CD/DVD 2	"
3.	CD/DVD 3	"
4.	CD/DVD 4	"
5.	CD/DVD 5	"
6.	CD/DVD 6	"
7.	CD/DVD 7	"
8.	CD/DVD 8	"
9.	CD/DVD 9	"
10.	Plaintiff's EEOC Charge of Discrimination dated 12/27/05, Bates 6-11	Plaintiff does not have a Title VII claim, not relevant, 401,403 Defendants reserve the right to use this document for impeachment purposes.
11.	General Order 58, Bates 13-14	

Exhibits	Description	Objections
12.	Plaintiff's performance review dated April 15, 2006, Bates 26-28	401, 403
13.	Plaintiff's performance review dated April 15, 2006, with handwritten notes from Captain Cummings, Bates Def. 1808-1810	401, 403
14.	Plaintiff's performance review dated October 17, 2000, Bates Def. 1811-1815	
15.	Plaintiff's performance review dated April 25, 2000, Bates Def. 1816-1820	
16.	Plaintiff's performance review dated October 30, 1998, Bates Def. 1826-1830	
17.	General Order 57, Bates 29-34	
18.	General Order 18, Bates 35-37	401,403
19.	Memo from James Mcfarlane to chief of police regarding officer's performance for 2004-05, Bates Def. 18864	401, 403 (dated 6/30/06)
20.	Article dated 1/19/06 from Southampton Press entitled "Complaint challenges bias claim, makes new allegations" Bates 186-188	801, 802, 403
21.	Document entitled Agenda, dated 2/11/05 with resolution promoting Lamison to Sgt/Detective Sgt, Bates 400, 413	
22.	Document entitled Southampton Village Police Department Rules of Conduct, Bates 402-412	401, 403, over broad
23.	Document entitled "New York State Law Enforcement Accreditation Program, standard 15.1" Bates 436-437	401, 403, 801
24.	Document entitled "Sgt (police: towns and villages), 5007" Bates 442-443	
25.	Preliminary Statement of Complaint by Plaintiff to NYSDOS, Bates 487-493	401,403
26.	Memo from Mark Epley regarding promotion of Lamison, Bates Def. 16221	Not in original pto, 401,403
27.	General Order 73, Bates Def. 11572-11582	401, 403
28.	Organization Chart, Bates Def. 11610	401, 403
29.	General Order 64, Bates Def. 13399-	401, 403

Exhibits	Description	Objections
	13401	
30.	Correspondence from Cummings to King regarding promotion of Lamison, Bates Def. 6000	Not in original PTO, 401, 403
31.	General Order 63, Bates Def. 14736-14748	401, 403
32.	Plaintiff's personnel file, Bates Def. 1355-1876, 2041-2058	Object to all documents dated following appointment date of 2/18/05
33.	Lamison personnel file, Bates Def. 941-1354, 16219-16225	Object to all documents dated following appointment date of 2/18/05
34.	Letter from King to Romanosky dated February 10, 2005, Bates Def. 16219	
35.	Promotional announcement of Lamison, Bates Def. 16220	
36.	Promotional Examination for position of Police Sergeant, Bates Def. 14064-14079	Not in original PTO, 401, 403
37.	Letter from Wilson to Lamison dated November 15, 2006, Bates Def. 1119-1120	401, 403
38.	NYS accreditation standard 34.2, Bates Def. 15881	401, 403
39.	Village police department policy manual, Bates Def. 9668-9725	Overly broad
40.	General order 45, Bates Def. 10423-10431	401, 403 (post event)
41.	General order 77, Bates Def. 10059-10063	
42.	General order 84, Bates Def. 10080-10085	401, 403
43.	General Order 103, Bates Def. 1877-1892	401, 403 (amended post event)
44.	Schedule A to CBA, Bates Def. 1900	401, 403
45.	Certificates of Disposition, Bates Def. 1924, 1912	401, 403
46.	Organizational Chart dated October 1999, Bates Def. 11167	401, 403
47.	Promotional List for Police Sergeant dated March 18, 2005	Not in original PTO, never provided, 401, 403

48.	General Order 113, Bates Def. 5952-5955	Not in Original PTO, 401, 403
49.	Commendation to Plaintiff from Sherry dated December 12, 1994, Bates Def. 14189	
50.	Portions of Collective Bargaining Agreement adopted December 3, 2003, Bates Def. 14079(A)-14080	Not in original PTO, 401, 403
51.	Southampton Village Police Department Rules of Conduct, Bates Def. 4185-4194	Overly borad

Plaintiff reserves the right to offer any exhibit listed by the Defendants, whether or not Defendants actually offer such exhibit at the time of trial. Defendants reserve the right to offer any relevant exhibit listed on plaintiff's exhibit list. Defendants further reserve the right to introduce documents not listed for impeachment purposes.

Defendant's Exhibits:

<u>Exhibits</u>	<u>Description</u>	<u>Objections</u>
A.	General Order 77: Discrimination in the Workplace	
B.	Letter dated July 16, 2004 from Chief Sherry to Mayor/Board recommending Lamison for the position.	
C.	Memo dated February 10, 2005 from Capt. King to Mayor/Board recommending Lamison for the position.	
D.	General Order 58 : Promotions	
E.	Message dated February 17, 2005 from Capt. King to all personnel.	
F.	Board Minutes regarding Lamison appointment.	
G.	Board resolution regarding Lamison appointment.	
H.	Broich personnel file, documents prior to February 18, 2005	
I.	Lamison personnel file, documents prior To February 18, 2005	
J.	Board Minutes covering Lamison appointment	

Defendants reserve the right to introduce documents not listed above for impeachment purposes.

VIII. WITNESSES

Plaintiff's Witnesses:

1. William Bates, Village Trustee who will testify that he initially opposed Lamison's promotion and was later pressured into voting for Lamison. 120 Court Street, Riverhead NY 11901
2. Bonnie M. Cannon, Village Trustee who, will testify that she delivered absentee ballots to Epley. 23 Main Street, Southampton NY 11968.
3. Andre E. Collins, President of Suffolk Minorities In Law Enforcement, who will testify that at a 2005 public board meeting, he organized a rally of representatives of different minority organizations to pressure the Trustees in promoting a minority officer. 69 Northside Drive, Sag Harbor NY 11963
4. Steven Demarco, former Southampton Village police officer who will testify that Lamison was not qualified to be the Detective Sergeant. 110 Old Riverhead Rd, Hampton Bays, NY 11946.
5. Robert Mark Epley, Mayor who will testify that the Southampton Village Police Department does not follow its own General orders in making promotions in the village of Southampton, or in the alternative, that he does not know that the general orders exist. 158 Harvest Lane, Southampton, New York 11968.
6. Darren Gagnon, Sergeant who will testify that he was eligible for the position, but was passed up. 151 Windmill Lane, Southampton, New York 11968.
7. Lars King, retired Chief of Police who presided over the force when Plaintiff was denied the promotion to Detective Sergeant. 246 Little Plains Road, Southampton, New York 11968.
8. Herman Lamison, individual who was appointed Detective Sergeant over Plaintiff. 151 Windmill Lane, Southampton, New York 11968.
9. Howard Lewis, Lieutenant who will testify that he conducted Plaintiff's evaluation in 2005, and that Chief of Police ordered him to conduct the evaluation even though he was not Plaintiff's reporting supervisor. 151 Windmill Lane, Southampton, New York 11968

10. James McFarlene, Village Trustee who will testify that Plaintiff was qualified as Chief of Police. 81 Wyandanch Lane, Southampton, NY 11968.
11. Orsen Munn, Ethics Board member who will testify that he was on Ethics Board with Plaintiff, and that Plaintiff was removed by the Mayor, and that he later resigned. 43 Foster Crossing, Southampton, NY 11968.
12. James Van Nostrand, Southampton Village Administrator who will testify that he attended every executive meeting. 23 Main Street, Southampton NY 11968.
13. Paul L. Robinson, Village Trustee who will testify that he voted against Plaintiff for Detective Sergeant. 23 Main Street, Southampton, New York 11968.
14. James Sherry, Retired Police Chief who will testify that he wrote a letter of recommendation for Lamison to get the job, which is not in compliance with General Order #58. 3 Linda Lane, Hampton Bays, NY, 11946.
15. Harold Steudte, Village Trustee who initially abstained from voting Lamison to Detective Sergeant. 58 Tuckahoe Lane, Southampton, New York 11968.
16. Lucis Ware, Chapter President of NAACP who will testify that was at meeting which voted Lamison to Detective Sergeant. 33 Flying Point Road, Unit 2142, Southampton, NY 11968.
17. William Wilson Jr., Defendant, Current Chief who will testify as to the promotion of Lamison. Orchard Lane, Southampton, NY 11968.

Plaintiff reserves all rights to call any witness on Defendants' Witness List, and reserves all rights to present witness testimony at trial as permitted under the Federal Rules of Civil Procedure and Local Civil Rules.

Defendant's Witnesses:

1. Christopher Broich will testify regarding his failure to be appointed to the position of detective sergeant.
2. Lars King will testify regarding his knowledge of facts and police department policy prior to his retirement.
3. Captain Thomas Cummings will testify regarding police department procedure.

4. Marla Donovan will testify regarding plaintiff's shortcomings as sergeant.
5. Mark Epley will testify regarding his lack of knowledge regarding Broich's failure to be appointed to detective sergeant, and his basic knowledge of Broich's demeanor and unprofessional conduct.
6. Herman Lamison will testify to his abilities and qualifications.
7. Robert Romeo will testify regarding his knowledge of plaintiff's performance within the police department.
8. Officer Stephen Kellis will testify regarding his knowledge of plaintiff's performance within the police department.
9. Sergeant David Dorchak will testify regarding his knowledge of plaintiff's performance within the police department.
10. William Wilson will testify to his knowledge regarding plaintiff's performance within the police department.

IX. DEPOSITION TESTIMONY

1. **Plaintiff's Designation of Deposition Testimony:** Plaintiff does not intend to offer any deposition testimony as part of his case in chief unless a witness becomes unavailable for trial, or unless the testimony is to be used for purposes of impeaching a witness or refreshing a witness' recollection.
2. **Defendants' Designation of Deposition Testimony:** Defendants do not intend to offer any deposition testimony as part of their case in chief unless a witness becomes unavailable for trial, or unless the testimony is to be used for purposes of impeaching a witness or refreshing a witness' recollection.

IT IS FURTHER ORDERED that the Court, in order to prevent manifest injustice or for good cause shown, may, at the trial of the within action or prior thereto, upon application by counsel for either party made in good faith, or upon the motion of the Court, modify this Pretrial Order upon such conditions as the Court may deem just and proper.

Dated: New York, New York

November 19, 2014

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